

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On June 4, 2004 the Board received notification that the petitioner wished to appeal this decision. The Board assigned Docket No. 19,109 to the case, and on June 7, 2004

the Board sent the petitioner a notice scheduling the matter for hearing in Burlington on July 7, 2004 at 11:30 a.m.

3. The petitioner alleges that on that date the hearing officer informed her that the hearings were running late (not an uncommon occurrence in that district). In such cases, the customary practice at that time was to offer petitioners the option of rescheduling their hearings later that same day, or reschedule them for the next scheduled hearing day in that district. The Board's records show on July 9, 2004 it mailed the petitioner a notice rescheduling her hearing on July 28, 2004 at 11:30 a.m.

4. The Board's records show that the petitioner did not appear on the day of her rescheduled hearing, and that on July 30, 2004 it mailed the petitioner a form letter noting her nonappearance and allowing her 7 days to contact the Board if she wanted the matter rescheduled.

5. The Board's records further show that it heard nothing more from the petitioner, and that on August 31, 2004 the Board entered an Order dismissing the petitioner's appeal. The Board's Order was mailed to the petitioner, and it included advice that the petitioner had 30 days to file an appeal.

6. The Board's records show that there was no appeal of its Order and that it received no further communication from the petitioner regarding the matter.

7. It appears that the petitioner now alleges that she did not receive any of the Board's notices and decisions following her initial hearing on July 7, 2004.

8. The Department's records indicate that on December 28, 2004 it notified the petitioner that following federal and state procedures it would recoup the balance of the petitioner's Food Stamp overpayment existing at that time (\$778) by intercepting her 2004 tax return.

9. The petitioner alleges (and the Department does not appear to dispute) that in March 2005 she entered into a voluntary agreement with the Department to repay the overpayment at a rate of \$10 a month. The Department's records show that except for an initial payment of \$18, the petitioner made no further payments pursuant to this agreement.

10. The Department's records show that in August 2005 it sent the petitioner a bill for the \$10 due in September and an arrearage of \$40. On September 13, 2005 the petitioner wrote the Department a letter disputing the categorization of the overpayment as "client error" and

requesting that the overpayment be "compromised" according to Department policy.

11. On October 27, 2005 the Department notified the petitioner that the request for compromise was denied because the Department had determined that the petitioner could "reasonably afford to repay the full amount (\$760) over a three-year period".

12. On January 5, 2006 the petitioner sent the Department a letter appealing "that I received an overpayment of Food Stamps" and reiterating a request for a compromise. On January 10, 2006 the Department sent the petitioner separate notices respectively denying her request for a compromise and informing her that her appeal of the overpayment itself was untimely due to the Board's dismissal of her original appeal in August 2004. Following a further exchange of letters and phone calls, the matter was referred to the Board on February 24, 2006.

13. Several status conferences were held in the matter with an attorney representing the petitioner who has since withdrawn from the case, and that attorney has filed a Memorandum in the petitioner's behalf. At a status conference on April 26, 2006 the parties represented and agreed that on February 10, 2006 the Department recovered the

entire remaining overpayment of \$760 through an intercept of the petitioner's tax refunds.

14. At a phone conference with the petitioner and the Department's attorney on September 19, 2006 the hearing officer informed the parties that he would issue recommended rulings regarding the timeliness of the petitioner's appeal and any other issue in which there is no dispute regarding any material fact.

ORDER

The Department's decision denying the petitioner's requests for a compromise of her Food Stamp overpayment is affirmed.

REASONS

As of October 2005, the Department had in place (either prospectively or retroactively) two separate procedures for adjudicating requests for "compromising" the amounts of outstanding Food Stamp overpayment claims. One was based on an unpromulgated procedure under which the amount of certain overpayments that had resulted entirely from the Department's "administrative error" could be reduced by one half. However, the Board has affirmed the Department's position

that this procedure is limited to overpayments resulting from Department error. Fair Hearing No. 19,655.

In this case, as noted above, the Department determined in May 2004 that the overpayment resulted from the petitioner "by mistake" not giving the Department information regarding the income of certain members of her household. The petitioner filed a request for a fair hearing regarding this decision, but her appeal was dismissed by the Board in August 2004 for her failure to appear. The petitioner did not appeal the dismissal of this fair hearing, and took no further action disputing her overpayment until September 2005.

It is well-settled law that the doctrine of res judicata bars the litigation of claims that were or should have been raised in a previous action, whether or not those claims were actually litigated. See *Lamb v. Geovian*, 165 Vt. 375,380 (1996). In this case, the cause of the 2004 overpayment was clearly the subject of the appeal filed by the petitioner in June 2004 in Fair Hearing No. 19,109. The record is clear that the petitioner was afforded a reasonable opportunity to raise her claims in that matter. Public policy and the integrity of the Board's rules and decision making authority dictate that the petitioner not be allowed to relitigate

those claims more than a year after the fact. See *Lamb*, *supra* at 382.

Inasmuch as it must be determined as a matter of res judicata that the overpayment in question did not result from Department error, the petitioner cannot qualify for a compromise of the overpayment on this basis. See Fair Hearing No. 19,655.

The other basis upon which individuals can claim a compromise of Food Stamp overpayments is § 273.18(e)(7) of the federal and state regulations. The petitioner correctly points out that the criterion for compromise under this provision is when "it can be reasonably determined that a household's circumstances dictate that the claim will not be paid in three years". The regulation itself provides no further guidance for making this determination. However, the Department has adopted an internal procedure for making such determinations (P-2540B4), which the record shows was used in the petitioner's case.

Under this procedure, all households are determined to be able to pay an amount equal to ten percent of the monthly statewide "Thrifty Food Plan" (TFP) amount for their family

size multiplied over three years.¹ In October 2005 the TFP amount in Vermont was \$399 for a family of three, which appears to have been the size of the petitioner's household at the time. Taking 10 percent of this amount (\$39.90) and multiplying it by 36 yield a three-year "affordability" figure of \$1,436.40. Inasmuch as this amount was well in excess of the petitioner's overpayment (\$778), the Department determined that the petitioner could afford to repay her overpayment within three years and, thus, was ineligible for any compromise of the overpayment amount.²

Neither the petitioner nor her former attorney has challenged the validity of the Department's procedures, *supra*, for determining whether a family can afford to repay an overpayment within three years. The only argument advanced by the petitioner is that the \$10 monthly amount she and the Department once agreed she would voluntarily repay would not allow for full recoupment of the overpayment within three years. The petitioner maintains that the \$10-a-month agreement "clearly establishes my inability to repay the full amount within the required three year period". However, it

¹ The Thrifty Food Plan is the maximum amount per month a family without any income can receive in Food Stamps.

² In cases where the overpayment exceeds the ten percent TFP calculation, the Department compromises only the excess amount.

must be concluded *as a matter of law* that this argument is misplaced.

There is nothing in the agreement the petitioner made with the Department to pay \$10 a month to suggest, much less bind the Department to conclude, that this amount is based on what the "household's economic circumstances dictate" (see *supra*). It is simply a negotiated amount the parties agreed that the petitioner would pay. Nothing in the regulations requires the Department to collect all overpayments within three years. And nothing in the regulations dictates that repayment agreements reflect a household's actual ability to repay. The fact that the Department was willing to allow the petitioner longer than three years to repay (without interest) was arguably in the petitioner's interest. It cannot be the basis to bind the Department, or the Board, to determine that the Department's written compromise procedures (*supra*) are either invalid or inapplicable.

Inasmuch as there is no material fact in dispute in this matter upon which the petitioner can gain the relief she seeks, and inasmuch as the Department's decision is in accord with its regulations and procedures, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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